IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1124 OF 2002

Mohd. Moin Patel
62, years,
Convict No. C-12067,
Yerawada Central Prison,'
Pune - 411 006. ...Appellant.

V/s

The State of Maharashtra
(At the instance of Antop
Hill Police Station,
Mumbai) ...Respondent.

Ms. D.M. Shah advocate for the appellant

Mr. A.M. Shringarpure for the respondent - State.

CORAM: V.M.KANADE,J.

DATE: 8th September, 2004

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. Appellant is challenging the judgment and order passed by the Sessions Court for Greater Bombay at Bombay in Sessions Case No.134 of 1999 dated 8/5/2001. By the said judgment and order appellant was convicted for the offence punishable under sections 363, 366, 376(2)(f) and 377 of the Indian Penal Code and sentenced to suffer R.I. for 7 years, 10 years, 10, years and 10 years respectively. The sentences, however, were to run concurrently.

2. Prosecution's case is that the appellant - original accused on 23/8/1998 at 5.00 P.M. invited two children; one boy and a girl at his residence ostensibly for the purpose of showing them television and when the children went into the house, he closed the door from inside and committed rape on the girl first and then he committed sodomy on the boy. P.W.3 Nurunissa Shaikh saw the entire incident and she called the people in the said locality. The children were taken to Sion Hospital where they were given medical treatment and were discharged on the next day. The investigation was carried out by the Police. Charge-sheet was filed and the Trial Court convicted the accused on the basis of the evidence adduced by the prosecution.

3. The learned Counsel appearing on behalf of the appellant has assailed the order of the Trial Court on various grounds. It is submitted that there is an inconsistency in the evidence of P.W.1 Samiulla Shaikh and P.W.3. It is further submitted that the evidence of P.W.1 was full of omissions and contradictions. She further submitted that the Trial Court erred in relying on P.W.12 -Imran Khan who was a child witness as, according to the learned Counsel appearing on behalf of the appellant, he was clearly tutored by his

mother. It is further submitted that there were some omissions and contradictions in the statement of P.W.12. It is further submitted that the evidence of P.W.3 also could not have been relied upon as it had come on record that her relations with the accused were strained. The learned Counsel further submitted that the Trial Court also had erred in relying on the evidence of P.W.7 - Dr. Gupta who examined the victim girl, since doctor had stated that there was no bleeding or blood stains were not found on the private parts of the girl who was raped. She further submitted that the medical evidence did not support the story of the prosecution and that no blood stains or semen were found on P.W.2 - Zarimunissa.

4. The learned Counsel appearing on behalf of the respondent - State vehemently opposed the said submissions. It is submitted that the prosecution has proved beyond the reasonable doubt that the accused was guilty for having committed the said offence with which he was charged. The prosecution has examined the boy and the girl on whom the said offence of rape and sodomy has been committed. P.W.3 was an independent eye witness who had seen the said incident. The evidence of doctor also supported the case of the prosecution. There is overwhelming

evidence on record to show that the accused had committed the said offence. He submitted that no case is made out by the accused - appellant and the appeal is, therefore, liable to be dismissed.

5. Prosecution has examined 15 witnesses. P.W. 2 - Zarimunissa is the victim girl. P.W. 12 - Imran Khan is a victim boy. P.W. 3 - Nurunissa Moinuddin is an eye witness to the said incident who is also complainant in the present case. P.W. 1 - Samiulla Shaikh is a father of P.W.2 - victim girl and P.W.11 - Sabria Sadruddin Pathan is the mother of P.W 12 - victim boy. Prosecution has examined four doctors. P.W. 7 - Dr. Ashish Gupta had examined two children as also the accused when they were brought to the Sion Hospital. P.W. 8 - Dr. Mamta Shetty has proved Exhibit-20 and P.W. 9 - Dr. Vivek Patkar had examined the victim girl - P.W.2 at Sion Hospital and P.W. 10 - Dr. Amol Chinglae had examined P.W. 12 - the victim boy. Prosecution has also examined P.W. 4 - Shaikh Mohd Mohd Jumman Shaikh as a panch witness who has witnessed and signed the panchanama Exhibit-9 regarding the clothes of the victim children being taken in possession. P.W. 5 - Santram Lalmal Yadav is the panch witness who has deposed about the spot panchanama. P.W. 6 - Mohd Khalil is a panch witness

who has seen the seizure of the clothes from the accused. Prosecution has also examined the two Investigation Officers viz. P.W. 13 - S.L. Thorat, P.W. 14 - Bharat Kirshna Shelke and P.W. 15 - Damodar Shravan Kamble is a Chemical Analyser. Prosecution has also brought on record various documents and articles and the report of the Chemical Analyser. P.W.2 - Zarimunissa has stated in her evidence that the accused had raped her and she identified that the accused was standing outside the Chamber. The Court has observed that she was very frightened and that she was not able to understand and speak properly and was not able to answer the questions which were asked. P.W. 12 - Imran Khan is a victim boy who has stated that he was 9 years old when the incident in question took place. He identified the accused. He answered the questions which were put to him by the Court and he has deposed that on the date of the incident he was playing with the girl and, at that time, the accused called both of them inside the house to watch the T.V. When they went inside, the accused closed the door and, thereafter, he has narrated as to how the accused initially raped the girl and, thereafter, committed sodomy on him. This witness subjected to cross-examination by the Counsel who appeared on

behalf of the accused. However, despite the searching cross-examination, his testimony has not been shaken. P.W.3 - Nurunissa Moinuddin Shaikh also witnessed the said incident. She has stated that she was sitting at the door of her house and was cleaning rice. She heard Zarimunissa crying and, therefore, she pipped into house of accused and saw that the accused had committed rape on Zarimunissa and, thereafter, sodomised P.W. 12. The Court has recorded the exact words in Hindi of this witness as also of P.W.2 and P.W. 12. This witness also has stated that she had gone to the Police Station and had lodged a complaint and she has identified the clothes which were worn by the children as also the clothes which were worn by the accused. This witness has also been cross-examined by the counsel for the defence. However, despite gruelling cross-examination, her testimony has not been shaken in the cross-examination. Along with this witness, oral testimony of two children and the eye witness, prosecution has also relied on the evidence of the Chemical Analyser. From the said evidence, it is clear that the blood stains and semens of the accused appeared on the clothes of the victim children and no explanation has been given by the accused as to how his blood stains and semens appeared on the clothes of

the two children. Along with the said evidence, medical evidence also supports the case of the prosecution. P.W. 7 - Dr Ashish Gupta stated that the Police Constable had brought two young children and told him about the history of forcible attempt of intercourse and on the examination of the anus of the victim boy, he found that it was loose. He examined the girl and he has stated that he could not make out whether the hymen were ruptured or not and he referred her to Gynaecological Department. He also examined the accused and found that there was no evidence of abrasion or cuts on his private parts. P.W. 9 - Dr. Vivek Patkar examined the girl and found that there were no abrasions or bleeding on her person. In my view, the evidence of P.W.12 has been sufficiently corroborated by P.W.3 and even if evidence of P.W.2 Zarimunissa is not accepted, since the Court has felt that she was mentally ill and was frightened even then the evidence of P.W.12 and P.W.3 is corroborated by the report of Chemical Analyser. The accused was also not in a position to explain as to how his blood stains and semen were found on the clothes of both the children. The other circumstances are proved by P.W.1 - the father of P.W.2 and P.W.11 - mother of P.W.12. The Trial Court, in my view, has taken into consideration the omissions and suggestions which were

made to the witnesses and has rightly come to the conclusion that the said omissions and contradictions were of minor nature. The Trial Court has relied on various judgments of the Apex Court wherein a consistent view has been taken that merely because there are minor contradictions in the evidence of the witnesses with respect to the exact date, time or place, the same would not have the effect of discarding the said evidence and, on the contrary, such inconsistencies of a minor nature should be regarded as natural especially in view of the fact that the witness has given the deposition after a lapse of some time after the actual incident has taken place. The evidence of the father and mother of both the victims - girl and boy clearly corroborate the testimony of the eye witness. P.W.11 has stated that her son had complained of pain from his rear side after the incident and that except first two buttons, remaining buttons had broken. Thus, in my view, the prosecution has proved beyond reasonable doubt that the accused had committed the said offence. The conviction and sentence is, therefore, confirmed.

Appeal is dismissed.

V.M. KANADE, J.